

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

J. BARRIOS, FNU HERNANDEZ, FNU
WHITE, and FNU GUTIERREZ,

Defendants.

Case No. 1:23-cv-00054-HBK (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR DEFAULT

(Doc. No. 30)

Plaintiff Durrell Anthony Puckett is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action brought under 42 U.S.C. § 1983 as screened under 28 U.S.C. § 1915A. (Doc. Nos. 1, 17). On June 3, 2023, Plaintiff filed a motion for entry of default judgment. (Doc. No. 30). Plaintiff claims that Defendants FNU Hernandez, FNU White, and FNU Gutierrez have failed to timely respond to his Complaint, and he seeks a default judgment and punitive damages. (*Id.* at1).


Entry of default by the Clerk of Court is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that failure is shown by affidavit or otherwise. *See* Fed. R. Civ. P. 55(a). The entry of default by the Clerk is a prerequisite for an entry of judgment upon that default. Fed. R. Civ. P. 55(b). Procedurally, no default was entered by the Clerk in this case. *See* docket. Thus, no default judgment may be entered. Further, Defendants

1 FNU Hernandez, FNU White, and FNU Gutierrez have not failed to timely file a response to
2 Plaintiff's Complaint. Waiver of Service of Summons were returned executed on Defendants
3 FNU Hernandez and FNU White on May 3, 2023, and their responses to the Complaint are not
4 due until July 3, 2023. *See* Doc. Nos. 26, 27, 29. Further, on May 5, 2023, the United States
5 Marshal returned the summons on Defendant Gutierrez as unexecuted. (Doc. No. 25). Thus, the
6 Clerk properly withheld entry of default. Fed. R. Civ. P. 55(a).

7 Accordingly, it is **ORDERED:**

8 Plaintiff's motion for entry of default (Doc. No. 30) is DENIED.

9
10 Dated: June 8, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE